

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RICHARD Y. OBENG,

Plaintiff,

v.

DELAWARE STATE POLICE, et al.

Defendants.

Civil Action No. 04-1248-GMS

**RESPONSE OF DEFENDANT FEDERAL BUREAU OF  
INVESTIGATION TO PLAINTIFF'S MOTION TO REOPEN**

The Federal Bureau of Investigation ("FBI") opposes Plaintiff's Amended Motion to Reopen Civil Action Case No. 04-1248 (GMS) ("Plaintiff's Motion") and in support of its opposition avers as follows:

1. If construed as a Motion to Alter or Amend Judgment under Fed.R.Civ.P. 59, Plaintiff's Motion is untimely, coming more than one year after the July 7, 2005 entry of the judgment complained of. Pursuant to the terms of Rule 59, "[a]ny motion to alter or amend a judgment shall be filed no later than ten days after entry of the judgment."

2. If construed as a Motion for Relief from Judgment under Fed.R.Civ.P. 60, Plaintiff's Motion fails to allege any new facts supporting a finding of any of the six specified grounds for such a motion. Plaintiff's motion does not contain any new allegations of "(1)mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud...misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged...; (6) any other reason justifying

relief from the operation of the judgment." Fed.R.Civ.P. 60(b). Instead Plaintiff's Motion simply restates his original fantastical and frivolous allegations, which the Court has already dismissed.

3. Moreover, if construed as a motion under Fed.R.Civ.P., it is untimely. Such a motion should be filed within a "reasonable" time. *Id.* Plaintiff's motion was filed more than a year after the judgment complained of.

4. Because the Court's judgment dismissing the claims against the FBI resulted from a finding that the Court lacked jurisdiction, and because Plaintiff's Motion does not address the jurisdictional issue, it should be summarily dismissed.

WHEREFORE Defendant FBI urges the Court to dismiss Plaintiff's Motion with prejudice.

COLM F. CONNOLLY  
United States Attorney

By: /s/Patricia C. Hannigan  
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Dated: October 25, 2006

**CERTIFICATE OF SERVICE**

I, Patricia C. Hannigan, hereby certify that on **October 25, 2006**, I electronically filed the foregoing **RESPONSE OF DEFENDANT FEDERAL BUREAU OF INVESTIGATION TO PLAINTIFF'S MOTION TO REOPEN** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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Notification of such filing will be sent via Federal Express to Plaintiff at the following address:

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